

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Hartford and South Haven, Michigan)

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MB Docket No. 03-257  
RM-10814

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**NOTICE OF PROPOSED RULE MAKING**

**Adopted: December 18, 2003**

**Released: December 23, 2003**

**Comment Date: February 17, 2004**

**Reply Comment Date: March 3, 2004**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed by WSJM, Inc. ("Petitioner"), licensee of Station WZBL(FM) at Hartford, Michigan, and Station WCSY-FM at South Haven, Michigan. Petitioner proposes (a) the reallocation of 279A from Hartford to South Haven, Michigan, and the modification of Station WZBL(FM)'s license accordingly; and (b) the reallocation of Channel 252A from South Haven to Hartford, Michigan, and the modification of Station WCSY-FM's license accordingly. Petitioner states its intention to apply for the respective channels, if reallocated.

2. The proposal is filed pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.<sup>1</sup> In support of its proposal, petitioner states that Stations WZBL(FM) and WCSY-FM are located on the same tower and are currently prohibited from increasing facilities on their own or adjacent channels due to spacing restrictions and community coverage concerns. As a result, petitioner seeks to change the community of license of WZBL(FM) from Hartford to South Haven, Michigan, and to change the community of license of Station WCSY-FM from South Haven to Hartford, Michigan. Petitioner further states that the reallocations will allow Station WCSY-FM to increase its power from 3.0 kilowatts to 6.0 kilowatts, resulting in a significant improvement to the station's facilities. Moreover, petitioner asserts that WZBL(FM) is a grandfathered 3.0 kilowatt short-spaced station pursuant to Section 73.213(c)(1) and is currently short-spaced to Station WXSS(FM) by 1.2 kilometers pursuant to Commission authorization, and has been so for years.<sup>2</sup> In waiving its short-spacing rules when allotted, the Commission determined that the "mere 1.2 kilometer short-spacing" that exists between Station WZBL(FM) on Channel 279A in Hartford and Station WXSS(FM) on Channel 279B in Wauwatosa is "de minimis." Petitioner advises that no new short-spacing

<sup>1</sup> See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

<sup>2</sup> See *Rural Initiatives for Shelter and Education*, 8 FCC Rcd 2472 (1993).

will be created by the instant proposal since Channel 279A is currently short-spaced to Channel 279B and will remain so regardless of whether the Station WZBL(FM) is reallocated to South Haven. Petitioner asserts that the proposal is deserving of approval because it will not create any new short-spacing or interference that does not already exist. However, Station WCSY-FM petitioner does seek to change its transmitter site for Channel 252A at Hartford to a fully-spaced site consistent with the Commission's Rules. Accordingly, petitioner avers that the proposal would result in a preferential arrangement of allotments by allowing Station WCSY-FM to provide an improved broadcast service to the public.<sup>3</sup>

3. Since Station WZBL(FM) does not seek to change its transmitter site by reallocating Channel 279A to South Haven, a gain and loss area study is not required. However, reallocating Channel 252A to Hartford, Station WCSY-FM does seek to change its transmitter site and is required to provide a gain and loss area study. While the Commission is concerned with the migration of stations from rural to urbanized areas, we note that the reallocation of Channel 252A at Hartford would result in the 70 dBu signal covering only 11.43 percent of the Benton Harbor-St. Joseph, Michigan Urbanized Area, and a *Tuck* analysis is not necessary.<sup>4</sup>

4. We believe that this proposal warrants consideration since the reallocation of Channel 279A to South Haven, Michigan, and the reallocation of 252A to Hartford, Michigan, would allow Stations WZBL(FM) and WCSY-FM to expand their service areas. The reallocations would not result the removal of the sole local service in either community because of the reallocations proposed herein, and Station WGMV(AM) (940 kHz) would remain licensed to South Haven, Michigan. An engineering analysis has determined that Channel 279A can be reallocated to South Haven in compliance with the Commission's minimum distance separation requirements at Station WZBL(FM)'s presently licensed site.<sup>5</sup> Additionally, Channel 252A can be reallocated to Hartford at petitioner's requested site without the imposition of a site restriction.<sup>6</sup> Since Hartford and South Haven are located within 320 kilometers (200 miles) of the U.S. Canadian border, concurrence of the Canadian government has been requested. As requested, we shall propose to modify Station WZBL(FM)'s license to specify operation on Channel 279A at South Haven, Michigan, and modify Station WCSY-FM's license to specify operation of Channel 252A at Hartford, Michigan, as their new communities of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest for the use of Channel 279A at South Haven, Michigan, or the use of Channel 252A at Hartford, Michigan, or require petitioner to provide equivalent class changes for the use of other interest parties.

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<sup>3</sup> The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3).] See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 91 (1982).

<sup>4</sup> *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951); *RKO General, Inc.*, 5 FCC Rcd 3222 (1990); and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

<sup>5</sup> The coordinates for Channel 279A at South Haven are 42-18-02 North Latitude and 86-15-03 West Longitude.

<sup>6</sup> The coordinates for Channel 252A at Hartford are 42-24-00 North Latitude and 86-16-20 West Longitude.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Hartford, Michigan	279A	252A
South Haven, Michigan	252A	279A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before February 17, 2004, and reply comments on or before March 3, 2004, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Paul A Cicelski, Esq.  
Shaw Pittman, LLP  
2300 N Street, N.W.  
Washington, D.C. 20037  
(Counsel for Petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do to apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.<sup>7</sup>

9. Parties are required to file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial

<sup>7</sup> See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73 606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

10. For further information concerning this proceeding, contact Sharon P. McDonald, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau

Attachment: Appendix

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APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

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6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 12<sup>th</sup> Street, S.W., Washington, D.C.